Office-Supreme Court, U.S.
FILED
JUL 7 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 213

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

WILLIAM G. GILCHRIST, JR., WILLIAM G. GILCHRIST, III and JAMES BLYTHE, Trustee for ROBERT A. GILCHRIST, a minor, Partners, d/b/a GILCHRIST & SONS; and G & R COAL CO., INC.

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

SNYDER AND RANDOLPH, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

WILLARD P. OWENS
900 Fifteenth Street, N.W.
Washington, D. C.

WILLIAM J. TURNBLAZER
Middlesboro, Kentucky

E. H. RAYSON
R. R. KRAMER
Burwell Building
Knoxville, Tennessee

Attorneys for Petitioner

KRAMER, DYE, MCNABB & GREENWOOD
Knoxville, Tennessee
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX

Page

Opinions Below 2

Jurisdiction 2

Questions Presented 3

Statute Involved 4

Statement of the Case 4

1. Basis for Federal Jurisdiction in the District Court 4

2. Kind of Action and the Judgment 5

3. The Facts, the Issues and the Decisions of the Courts Below 5

(a) The Parties 5

(b) Background of Dispute 6

(c) The Alleged Illegal Conduct 7

(c 1) Court's determination of Sec. 303 violation 10

(c 2) Court's determination of State common law violation 12

Reasons for Granting the Writ 16

Question #1 16

A. Decision is in Conflict with Decisions of this Court 16

(a) As to G & R 16

(b) As to S & R 19

(c) As to Gilchrist & Sons 21

B. The Sixth Circuit's Decision is in Conflict with Decisions of Other Circuits 22

C. A Question of Importance 23

Question #2 25

Page

Question #3 30

Question #4 36

Conclusion 42

Appendix 1a

TABLE OF CITATIONS

CASES:

Amazon Cotton Mill Co. v. Textile Workers Union, 4 Cir. (1948), 167 F. 2d 183, 186 34
Apex Hosiery Company v. Leader, 310 U.S. 469 32
Blue Ridge Coal Corp., 129 NLRB No. 19 (1960) 39, 40
Crabb v. Welden Brothers, 8 Cir. (1947), 164 F. 2d 797 36
Debs, et al, In re Eugene, 158 U.S. 564 38
Deena Products Co. v. United Brick & Clay Workers of America, 6 Cir. (1952), 195 F. 2d 612 27
DiGiorgio Fruit Corp. v. NLRB, D.C. Cir. (1951), 191 F. 2d 642 22
Duplex Printing Press Co. v. Deering, 254 U.S. 443 .. 32
Electric Wheel Co., 120 NLRB 1644, 1647 (1958) 39
Fife v. Great A & P Tea Co., 356 Pa. 265, 52 A. 2d 24, 37 (1957) 39
Flame Coal Company, et al v. UMWA, Civil Action No. 555, U.S.D.C., E.D. Ky. (not reported) 23
French Renovating Co. v. Ray Renovating Co., 6 Cir. (1948), 170 F. 2d 945 36
General Committee, etc. v. Missouri-Kan.-Tex-R.R. Co., 320 U.S. 323, 332, 333 34
Hurn v. Oursler, 289 U. S. 238 .....30, 31, 35
Hitchman Coal & Coke Company v. Mitchell, 245 U.S. 229 32
Hunt v. Crumboch, 325 U.S. 821, 826 33
International Brotherhood of Electrical Workers v. NLRB, 341 U.S. 694 .....16, 18, 20
Int'l Ladies' Garment Workers Union v. NLRB, D.C. Cir. (1956), 237 F. 2d 545 .....36, 40
Kaplan v. Helenhart Novelty Corp., 2 Cir. (1950), 182 F. 2d 311 36
Kleinman v. Betty Dain Creations, Inc., 2 Cir. (1951), 189 F. 2d 546 36

Page

Landstrom v. Thorpe, 8 Cir. (1951), 189 F. 2d 46 36
Lewis, et al v. Wm. Gilchrist, et al, Civil Action No. 3398, U.S.D.C., N.D. Ala. (1961) 24
Local 618, Automotive, Petroleum & Allied Industries Employees Union v. NLRB, 8 Cir. (1957), 249 F. 2d 332 22
Local 761, Int'l Union of Radio and Machine Workers v. NLRB, ... U.S. ...., 6 L. ed. 2d 592 .....16, 17
Local 1976, United Bro. of Carpenters v. NLRB, 357 U.S. 93, 100 29
Loewe v. Lawlor, 208 U.S. 274 and 235 U.S. 522 32
Lumber and Sawmill Workers Union, 87 NLRB 937, 940-941 (1949) 39
Martens v. Barrett, 5 Cir. (1957), 245 F. 2d 844 28
Maternally Yours v. Your Maternity Shop, 2 Cir. (1956), 234 F. 2d 538 36
Melrose Realty Co., Inc. v. Loew's, Inc., 3 Cir. (1956), 234 F. 2d 518 28
National Union of Marine Cooks and Stewards, 87 NLRB 54, 75 (1949) 39
NLRB v. Columbia Enameling & Stamping Co., 306 U.S. 292, 300 40
NLRB v. Denver Bldg. and Construction Trades, 341 U.S. 675, 686 18
NLRB v. Int'l Rice Milling Co., 341 U.S. 665 (1951) 16, 17, 18, 20, 35
NLRB v. Local 294, Int'l Bro. of Teamsters, 2 Cir. (1960), 284 F. 2d 887, 889 22
NLRB v. Service Trades Chauffeurs, etc., 2 Cir. (1951), 191 F. 2d 65 22
NLRB v. Tex-O-Kan Flour Mills, Inc., 5 Cir. (1941), 122 F. 2d 433 .....36, 40, 41
Perry Norvel Co., 80 NLRB 225, 243 (1948) 38
Piezonki v. NLRB, 4 Cir. (1955), 219 F. 2d 879 22
Productive Inventions, Inc. v. Trico Products Corp., 2 Cir. (1955), 224 F. 2d 678, cert. den. 350 U.S. 936.. 28
Retail Fruit and Vegetable Clerks Union v. NLRB, 116 NLRB 860, enforced 9 Cir. (1957), 249 F. 2d 591 .. 18
Sailor's Union of the Pacific, 92 NLRB 547 18
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) 31, 35
Snow Crest Beverages, Inc. v. Recipe Foods, Inc., D.C. Mass. (1956), 147 F. Supp. 907, 909 .....28, 29

Page

Strey v. Devine's, Inc., 7 Cir. (1954), 217 F. 2d 187 ... 36
Sunfire Coal Co., etc. v. UMWA, Civil Action No. 284, U.S.D.C., E.D. Ky. (not reported) 23
UMWA v. Love and Amos Coal Company, 6 Cir. (1960), 279 F. 2d 716 .....25, 27, 28
UMWA v. Meadow Creek Coal Co., 6 Cir. (1959), 263 F. 2d 52, cert. den. 359 U.S. 1013 30
UMWA v. Osborne Mining Co., Inc., 6 Cir. (1960), 279 F. 2d 716, cert. den. 364 U.S. 881 .....17, 22, 30
UMWA v. Patton, 4 Cir. (1954), 211 F. 2d 742 ..30, 34, 35
UMWA v. Red Jacket Consol. Coal & Coke Co., 4 Cir. (1927) 18 F. 2d 839 32
United Brick & Clay Workers v. Deena Artware, 6 Cir. (1952), 198 F. 2d 637, cert. den. 345 U.S. 906 ..16, 18, 27
United Bro. of Carpenters, etc. v. U. S., 330 U.S. 395, 419 .....38, 41
United Construction Workers v. Laburnum Construction Corp. (1954), 347 U.S. 656 31
United States v. Hutcheson, 312 U.S. 219 32
U. S. v. White, 322 U.S. 694, 704 .....36, 39

STATUTES:

Labor-Management Relations Act, 1947:
Section 8(b)(4) 16, 23
Section 303 .....3, 4, 5, 10, 11, 14, 16, 17, 19, 22, 23, 24, 25, 26, 27, 30, 34, 35, 36
Section 303(b) 11, 21, 27

Labor-Management Reporting and Disclosure Act of 1959, Sec. 704(e) 4

Norris-LaGuardia Act:
Section 106 .....38, 41
Section 201 32

Sherman Act:
15 U.S.C. Section 1 .....31, 33
15 U.S.C. Section 15 .....27, 28, 29

28 U.S.C., Sections 1254(1) and 2101(e) 2
29 U.S.C. 185(e) 38

Page

MISCELLANEOUS:

Congressional Record, Volume 93, pages 5074-5 27
Constitution of the U. S. 23
Legislative History of the Labor-Management Relations Act, 1947, Vol. I, pp. 158, 204, Sec. 12 of HR 3020 31
Legislative History of the Labor-Management Relations Act, 1947, p. 1026, 1204-5 39
The Labor Injunction, Frankfurter and Greene, p. 210 32
The New Labor Law, (BNA, 1947) 27
Union Responsibility for Acts of Officers and Members, 63 Harvard L. R. 1035, at p. 1046 41

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

WILLIAM G. GILCHRIST, JR., WILLIAM G. GILCHRIST, III and JAMES BLYTHE, Trustee for ROBERT A. GILCHRIST, a minor, Partners, d/b/a GILCHRIST & SONS; and G & R COAL CO., INC.

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

SNYDER AND RANDOLPH, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, United Mine Workers of America,[1] prays that a writ of certiorari issue to review the judgment

---

[1] Herein referred to as UMW, or Petitioner.

of the United States Court of Appeals for the Sixth Circuit[2] entered May 1, 1961, in Case No. 14,379, styled William G. Gilchrist, Jr., William G. Gilchrist, III, and James Blythe, Trustee for Robert A. Gilchrist, a minor, Partners d b/a Gilchrist & Sons,[3] and G & R Coal Co., Inc.,[4] v. United Mine Workers of America, and Case No. 14,380, styled Snyder and Randolph, Inc.[5] v. United Mine Workers of America, wherein the Sixth Circuit affirmed a judgment entered by the United States District Court for the Eastern District of Tennessee, Northern Division,[6] in favor of plaintiffs in the total amount of four hundred seventy-nine thousand ($479,000) dollars.

A certified joint appendix, together with the proceedings in the Sixth Circuit, is furnished herewith.

OPINIONS BELOW

The Sixth Circuit's opinion appears in the Appendix hereto[7] at pages 1a et seq., and is reported in F. 2d .

The District Court's memorandum, not officially reported, appears in the certified joint appendix at pages 54 to 133.

JURISDICTION

The jurisdiction of this Court is conferred under 28 U.S.C. Secs. 1254(1) and 2101(e). The judgment of the Sixth Circuit was entered May 1, 1961.

---

[2] Herein referred to as Sixth Circuit.

[3] Herein referred to as Gilchrist & Sons, or the partnership.

[4] Herein referred to as G & R

[5] Herein referred to as S & R.

[6] Herein referred to as District Court.

[7] The abbreviation "A" refers to the Appendix to this Petition.

QUESTIONS PRESENTED

1. Where a union sought collective bargaining agreements with two coal-producing companies whose coal was hauled by independent trucking contractors from their respective mines to a common tipple operated by one of the producing companies, and where a non-producing company furnished mining equipment, mining sites and the tipple to one of the companies and sold all coal processed and loaded at the tipple, does picketing at the tipple entrance and the entrance of the mine of the producing company which operated the tipple (no picketing occurred at the mine of the other producing company) constitute a violation of Section 303 of the Labor-Management Relations Act, 1947[*] as to both the producing companies and non-producing company?

2. May a partnership, though not an employer of employees primarily or secondarily involved in a labor dispute, assert an action based upon a secondary boycott violative of the Act's Section 303(b) on the theory that its business was integrated with that of a primary employer and that it was damaged in the dispute?

3. In an action against a labor union for damages claimed to have resulted from a labor dispute under Section 303 of the Act wherein plaintiffs contended that certain actions which occurred during the dispute constituted violations of Section 303 by the union and that the union's entire course of conduct during the dispute constituted unlawful interference with plaintiffs' businesses violative of State common law, did the District Court have jurisdiction to determine liability under the common law or non-Federal cause of action?

---

[*] Herein referred to as the Act.

4. Where properties owned or used by mining concerns were clandestinely damaged by dynamite explosions at a time a labor union was seeking to represent the employees of such concerns; and where no evidence was introduced establishing participation in or authorization or ratification by union agents or members; and where union representatives denied individual or union involvement therein; and where the District Court expressly concluded that the wrongful "acts of others not authorized by (the union) may have contributed to the result," may the union nevertheless be held liable therefor on the theory that the union had "created among its members a spirit of lawlessness and animosity toward" the mining concerns?

STATUTE INVOLVED

The statutory provision involved is Section 303, Labor-Management Relations Act, 1947 [29 U.S.C. 187, 61 Stat. 158(a)(1) and (2)][9] set forth in the Appendix hereto at page 7a.

STATEMENT OF THE CASE

1. Basis for Federal Jurisdiction in the District Court

The basis for Federal jurisdiction in the District Court of the original complaint was Sec. 303 of the Labor-Management Relations Act, 1947 (29 U.S.C.A. Sec. 187). District Court also asserted ancillary jurisdiction of an alleged violation of the common law of Tennessee and Kentucky.

---

[9] This reference is to Section 303 of the Labor-Management Relations Act, 1947 prior to amendment thereof by Section 704(e) of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 87-257, Title VII, Sec. 704(e), 73 Stat. 545, 29 USC Sec. 187. All references to "Section 303 of the Act" are to the Act prior to the 1959 amendment. The amendment does not alter the questions involved.

2. Kind of Action and the Judgment

Gilchrist and Sons and G & R, by complaint, and S & R, by separate complaint, charged that UMW had violated the Act's Section 303 and that UMW by various means in furtherance of the alleged violation of Section 303, had interfered with their businesses (R. 17-28).[10] UMW denied the material allegations of the complaints (R. 29-34).

The cases were tried together without a jury and the District Court found UMW liable under Section 303 and under the common law of Tennessee and Kentucky. Findings and conclusions were filed on August 5, 1960, directing entry of judgment for Gilchrist & Sons in the amount of $239,000 compensatory and $79,000 punitive damages; for G & R in the amount of $20,000 compensatory and $7,000 punitive damages; and for S & R in the amount of $101,000 compensatory and $33,000 punitive damages, making a grand total of $479,000. (R. 54-133). On August 11, 1960, judgment was entered accordingly. (R. 134-155). On May 1, 1961, the Sixth Circuit Court affirmed (Certified Record).

3. The Facts, the Issues and the Decisions of the Courts Below

(a) The Parties

Petitioner, United Mine Workers of America, is an unincorporated labor organization. Plaintiffs are Snyder and Randolph, Inc., G & R Coal Co., Inc., and Gilchrist and Sons, a partnership composed of Wm. G. Gilchrist, Jr., Wm. G. Gilchrist, III, and James Blythe

[10] The abbreviation "R" refers to the Joint Appendix filed in the Sixth Circuit. References to page numbers therein will omit the letter "a".

(Trustee for Robert A. Gilchrist, a minor). Gilchrist, Jr., owns 60 per cent of the stock of G & R and is its President. Gilchrist, III, owns 30 per cent of the stock and is its Vice President. Myron Sitton owns 10 per cent of the stock and is its Secretary-Treasurer.

(b) Background of Dispute

Gilchrist & Sons held leases on a number of tracts of land in Tennessee and Kentucky. In addition, it owned mining equipment and processing and loading facilities (tipples) in Jellico, Tennessee.

In 1956 and thereafter, Gilchrist & Sons, under contract with G & R, furnished G & R with strip mine sites, mining equipment and tipples. G & R thereunder mined and hauled the coal to the tipples, operated the tipples and loaded the coal into designated conveyances for a stipulated price per ton. Gilchrist & Sons sold the coal so mined, prepared and loaded by G & R (R. 146-151, 159-162, 165, 166). G & R also processed and loaded coal purchased or sold on commission by Gilchrist & Sons and brought to the tipple by other operators (R. 202, 204, 211, 223, 236, 237).

G & R signed a collective bargaining agreement with UMW covering its 3 or 4 employees at its tipple and 10 or 12 employees at the mining site (R. 192). Gilchrist & Sons did not have any employees engaged in mining or tipple operations and hence was not an employer of any employees involved at any time during the controversy (R. 225-226, 240).

G & R gave UMW a sixty-day cancellation notice of its contract (R. 208, 239, 304), effective about March 1, 1959 (R. 821). The UMW had negotiated an amendment to its basic agreement with other operators in December 1958 which G & R "couldn't go along with"

(R. 206). This, *inter alia*, prompted G & R's notice of cancellation.[10a]

In January, 1959, G & R subleased nearby Kentucky coal lands to S & R. S & R also contracted with Gilchrist & Sons whereby S & R delivered coal to the G & R tipple in Jellico and Gilchrist & Sons sold the coal and paid S & R the sales price less a commission (R. 1204, 1205). S & R started operating on a non-union basis on February 9, 1959.

G & R and S & R each had entered into contract with "truckers" to haul the coal from the mines to the tipple. Some trucks were operated by the owners thereof and others by employees of truck owners (R. 1156-1157).

In February, Prater and Daniel, UMW District 19 representatives, held negotiations with G & R and S & R with a view to signing agreements but to no avail (R. 727, 756, 827-829, 833-834, 897-900).

Other operators in the area also refused to sign the new UMW agreement and widespread strikes resulted upon contract cancellation.

(c) The Alleged Illegal Conduct

On February 26, Prater and others went to G & R's mine and met its employees leaving work (R. 727). Prater asked them not to work after the expiration of

[10a] G & R had failed to pay in full a 40 cent per ton payment into a welfare fund as required in the UMW agreement. Similarly, its predecessor, in which Gilchrist, Jr. was principal, had not made full payments to the welfare fund. Prior to G & R's notice of cancellation, Gilchrist, Jr. had been threatened with suit by the welfare fund (R. 191, 1212, 1223). In UMW's fruitless 1959 negotiations with G & R, Gilchrist, Jr. voiced this as a point of dissatisfaction (R. 897-900, 929-931).

the contract. The men including the truck drivers who were present, were asked to join the union if they did not already belong (R. 374-375, 820, 826, 895-896, 1096-1097).

On March 2, after contract expiration, Prater and a local union official went to the entrance to the G & R mine and flagged truckers and miners going to work. Prater explained if they continued to work it would be on a non-union basis. He asked them not to work and told them they would be given aid by District 19. None of the truckers or employees worked that day (R. 375-377, 830-831, 1077-1079).

On March 3 and 5, Prater, Daniel and the District 19 Vice President discussed the proposed contract with G & R and S & R officers and said they would shut the mines down if agreement was not reached (R. 728-731, 731-732, 756-757, 834-835, 837-839, 900-901, 929-931).

The contract negotiations were held jointly because S & R would not sign a contract unless G & R also signed (R. 728). Randolph, Pres. of S & R, had explained to Prater that S & R was closely tied in with G & R and what G & R did he would more or less go along with (R. 834). Randolph had said he would discuss things with Gilchrist before S & R could make any move on the contract (R. 730).

On March 9, Daniel and others gathered at the entrance to G & R's tipple. Bryant, an employee of a trucking contractor hauling coal from S & R mines, was told by one of the group not to haul more coal there (R. 586-587). Daniel talked to a trucker and asked him to sign a union card and told him he hoped he would not be back (R. 902).

On the same day, Brown, a truck driver for Willie Johnson, who hauled coal to the G & R tipple from small, deep mines subleased by G & R, met with other truck drivers at a filling station away from the tipple. They knew of the pickets and decided not to haul coal. (R. 608-617)

On the night of March 9 or the early morning of March 10, Prater and Daniel heard that operations at the Jellico tipple were to be resumed and they, with a UMW member, went to the tipple entrance. Bays, a truck driver employed by a firm hauling coal for S & R, was asked or told to dump his coal in the tipple driveway. Bays returned later and dumped another load of coal in the same manner (R. 665-675, 842-847).

On March 9 and 10, S & R truckers refused to work (R. 741) and S & R miners decided to cease work (R. 947, 979, 1101). By this date 10 of S & R's 14 employees had signed UMW application cards (R. 841-842, 1100).

On March 10, Prater, Daniel and others went to the G & R mine entrance. They met truckers there and informed them the contract had not been signed and asked them not to haul coal (R. 854-855). Upon learning that some G & R employees had gone to the strip pits they proceeded there. John Hacker, Superintendent of G & R's mine, and his son, Harold, testified Prater threatened abuse if work continued. Prater denied it. Prater informed the employees they would lose their medical benefits and other benefits if they worked non-union. He reiterated that UMW would provide aid for its members. The employees went home (R. 539-542, 855-861, 908-911, 991-993, 1091-1094).

Sometime in March and thereafter, District 19 furnished the aid referred to by Prater on March 10. District 19 furnished food in amounts equal to $25.00 per week to all members out of work due to the dispute. This was handled by UMW local union committees (R. 868). These committees investigated and supervised this food plan to determine that only those eligible received it (as many as 3,700 men received it) and in proper amounts (R. 868-870, 1146-1153). Prater made arrangements with several restaurants in the area to feed these committees (R. 870).[11]

During March and April, Prater and Daniel with various members of the union drove in motorcades throughout the mining areas with placards advertising their "No Contract, No Work" tradition. (R. 847-852, 912-913, 938-939, 942).

(C. 1) Court's determination of Sec. 303 violation

The Sixth Circuit affirmed the District Court's holding that by the above facts UMW violated Section 303 ". . . in inducing employees of neutral employers to engage in a concerted refusal to transport or otherwise handle coal or perform services, *among the objects of such activity being to force or require employees of other employers and self-employed persons to cease doing business with the three plaintiffs . . .*" (Conclusion #2, R. 123-124) (Emphasis supplied); and that "the truck haulers and deep mine sublessees were independent contractors, and the inducement and encouragement for concerted action against the employees of the truck drivers and the deep mine operators was a secondary boycott" (Conclusion #4, R. 124).

---

[11] Jack Lohr was a member of one of these committees (R. 879).

The District Court further found Gilchrist & Sons was damaged by violation of Sec. 303 by UMW "in inducing trucking employees of another employer to refuse to transport coal to the plaintiff's (Jellico) tipples and one of the objectives was to force Snyder & Randolph, Inc., and other persons to cease doing business with the partnership . . . The cutting off of the supply of coal to the Gilchrist tipples was one of the stated objectives of the Union. The statute requires only that this be one of the objectives, . . ." although another objective was to force Snyder & Randolph, Inc., and G & R to recognize the Union as bargaining agent of its employees. "Moreover, the hauling of coal belonging to the partnership was stopped by the secondary and other illegal activities of the defendant independently of any effect such activities may have had on the contractual relationship of the partnership with G & R Coal Company. The principal activities of the defendant in Jellico were secondary rather than primary activities and were directly aimed at Gilchrist & Sons, the partnership." (Conclusion 11, R. 126-127)

In addition, the District Court held that although Gilchrist & Sons was not a primary or secondary employer it may recover under Sec. 303(b), which reads: "Whoever shall be injured in his business or property by reason of any violation of subsection (a) . . . may sue therefor in any district court of the United States . . ." provided the damages are not too remote and subject of competent proof (Conclusion 12, R. 127-131). The Sixth Circuit approved of this finding on the basis that the partnership had an integrated coal business with G & R, an instrumentality controlled by its members, and that it was directly damaged by the unlawful interference. (A. 6a).

(C. 2) Court's determination of State common law violation

District Court also found, and the Sixth Circuit approved, this conduct constituted ". . . an unlawful interference with the business of plaintiffs in violation of plaintiffs' rights under the common law of Tennessee and Kentucky . . ." (Conclusion 10, R. 126). Furthermore, the District Court made additional findings of fact in which it found UMW liable for unlawful interference with the business of the plaintiffs in violation of the common law. The additional incidents, all occurring one and one-half months later and thereafter, are as follows:

On May 1, S & R resumed its operations with a new crew (R. 760-781). S & R contracted with truck owner-operators Arnold Spradlin, E. H. Harris and George Bray to haul coal to the G & R tipple (R. 741). G & R resumed operation of the Jellico tipple (R. 223).

Harris hauled coal two days. One night an unknown and unidentified person shot at his truck (R. 807).

George Bray testified an unknown and unidentified person dynamited his truck, parked at his brother's house (R. 644).

On the night of May 1, George Lindsay, a G & R repairman, returning home from Jellico was shot at by an unknown and unidentified person. After he entered his home a car drove past many times, and then some men walked past his house talking (R. 446-450). He could hear their voices but could not see them. He "pretty well" knew the voice of one of them—Bob Bailey, a UMW member (R. 458-461).

On Saturday night, May 3, Walter Fuston, a prospective G & R employee, got in a fight with the son of a UMW member who took care of a Local Union hall (R. 481, 483-484, 943-944, 1006-1007, 1014-1015).

On May 7, at approximately 12:30 A.M., two crushers, part of the Jellico tipple, were damaged by dynamite explosions. Williams, a railway employee testified that just prior to the explosion, approximately two blocks away from the tipple, he saw a man named Jack Lohr, a member of the union, walking in a direction away from the tipple (R. 491-503). Lohr and two other men were arrested, questioned and released by the Sheriff after consultation with the Assistant District Attorney (R. 958-960).

S & R then began hauling coal to a tipple in Gatliff, Kentucky owned by a man named Crowley but operated by S & R (R. 750). In early June, a trestle of the L. & N. R.R. serving the Gatliff tipple was dynamited by unknown and unidentified persons.

On June 16, S & R's auger was damaged by dynamite by unknown and unidentified persons. (R. 648-651, 743). The auger was repaired and S & R resumed operations. (R. 845-846, 774). In October, the Gatliff tipple was burned. The evidence does not establish whether this occurred in consequence of a deliberate act. There is evidence that on that day and shortly before the fire the S & R employees had been working on the tipple welding the equipment. (R. 760).

In January 1960, S & R moved to Bell County, Kentucky. (R. 750-765).

No evidence connects UMW with any of these incidents. Prater, Daniel and Edwards denied that they or UMW were connected in any manner with such shootings, dynamite explosions, etc. Prior to the reopening of G & R and S & R in May, District 19 had sent representatives to local unions in the area to caution members against the use of violence or threats

of violence. In response to a question by the Court, Prater said he was shocked by news of the destruction of property, that he had tried "to prevent anything like that happening in the area (he) served;" and that he "had nothing whatsoever" to do with it (R. 864-867, 913-916, 934, 1056, 1156).

The Sixth Circuit affirmed the District Court's conclusion that material facts supporting the action under Section 303 supported the common law action; that the Federal and common law claims were but different grounds of a single cause of action for wrongful interference with plaintiffs' business; and that it had jurisdiction under the doctrine of pendant or ancillary jurisdiction (Conclusions 1, 8, R. 123, 125).

Also affirmed was the District Court's holding that petitioner was responsible for all acts, detailed heretofore, committed by unknown persons. The District Court concluded that damage to the tipple resulted from union organizational activities either by union members, sympathizers, or by persons who were induced or encouraged to commit the wrongful acts by reason of the attitude of lawlessness that was brought about in the area by the union members who tried to force the plaintiffs and all other non-union coal operators to sign a union contract. (Finding 25, R. 116; Finding 38, R. 121; Finding 42, R. 123)

In Conclusion of Law #4 (R. 132) the District Court spelled out its legal theory of responsibility for the dynamiting of both the auger of S & R and the tipple of G & R. The District Court stated that petitioner created among its members a spirit of lawlessness and animosity towards plaintiffs, thereby creating a situation or climate in which the risk of harm to

their properties was greatly increased and that its conduct was a substantial factor in causing the dynamiting even though the result may have been contributed to by other forces and even though the acts of others not authorized by the defendant may have contributed to the result.

REASONS FOR GRANTING THE WRIT

Question #1

A. Decision Is in Conflict With Decisions of This Court

The Sixth Circuit's affirmance of the District Court's conclusion that Petitioner violated Sec. 303 of the Act in each case is in conflict with the decision of this Court in *NLRB* v. *International Rice Milling Co.*, 341 U.S. 665 (1951) and as further clarified in *Local 761, Int'l Union of Radio and Machine Workers* v. *NLRB*, U.S. , 6 L. ed. 2d 592.

Although *International Rice Milling*, *supra*, and *Local 761*, *supra*, construed Sec. 8(b)(4), the condemned conduct is the same in Sec. 303, the latter section providing a civil remedy for the wrongful conduct and Sec. 8(b)(4) providing an administrative remedy. The words used in both sections have the same meaning. *International Brotherhood of Electrical Workers* v. *NLRB*, 341 U.S. 694. Section 303 "is the counterpart of Sec. 8(b)(4) of the Act." *United Brick & Clay Workers* v. *Deena Artware*, 6 Cir., (1952) 198 F. 2d 637, cert. denied 345 U.S. 906.

(a) As to G & R

The conflict arises in the G & R case in the finding that the primary picketing at the G & R tipple and its strip mining site had as one of its objects the cutting off of the supply of coal to the tipple, although it had another object—to force G & R to recognize the union as the bargaining agent of G & R's employees (Conclusion No. 2, R. 123, Conclusion No. 11, R. 126-127). G & R had two locations where it conducted its business. One was the strip mine where it produced the coal and one in Jellico where it processed and loaded the coal into trucks or railroad cars. G & R contracted

with trucking contractors to haul the coal from the strip mine to the tipple. Therefore, the activity at each location was primary and the fact such picketing induced the employees of the trucking contractors not to haul the coal does not bring such picketing within the proscription of Sec. 303.[12] Petitioner did not engage in a strike against the trucking contractors, but directed its activity towards the primary employer. *International Rice Milling, supra.* Even under the common situs doctrine where stricter standards of interpretation are applied, the activity would would be lawful because (1) the employees of G & R and the secondary employers used the same entrances, and (2) the secondary employers were performing work "necessary to the normal operations of the business." Thus, such activity was in complete conformity with the standard set forth in *Local 761, supra.*

The Sixth Circuit's error is found in its reliance on *UMWA* v. *Osborne Mining Company, Inc.*, 6 Cir. (1960), 279 F. 2d 716, cert. denied 364 U.S. 881, wherein it misconstrued *International Rice Milling Co., supra*, by giving it too narrow an interpretation. The Sixth Circuit therein stated, "The activities of the defendants were not directed against a single neutral party as in *NLRB* v. *International Rice Milling Company . . .*", "but to many neutral employers and their employees." . . . "The statute proscribes certain activities irrespective of where they take place. *Even in picketing at the premises of a primary employer the union must exercise its rights consistent with the right of neutral employers to remain uninvolved in the dispute. Retail*

[12] The "neutrality" of the truckers should be considered in light of the fact they performed a routine step in the operation and Gilchrist's assertion he "hired and fired the truckers" as it suited him. (R. 1157).

Fruit & Vegetable Clerks Union v. *N.L.R.B.*, 9 Cir. (1957) 249 F. 2d 591; . . . *Deena Artware*, . . .". (Emphasis supplied). Thus, the Sixth Circuit, in seeking to follow the Congressional "objective of protecting neutral employers" ignored the Congressional objective of permitting employees and unions to engage in an ordinary primary strike even if secondary employers are affected by the strike, *International Rice Milling*, *supra*, and repeated in *Electrical Workers*, *supra*. *NLRB* v. *Denver Building and Construction Trades Council*, 341 U.S. 675, 686.

The Sixth Circuit also ignored the fact that *Retail Fruit* was a common situs case with primary and secondary employers performing separate, unrelated tasks and, although the Board and the Ninth Circuit applied a strict application of the tests which the Board previously set forth in the *Moore Drydock* case, *Sailor's Union of the Pacific*, 92 NLRB 547, the Board made clear that it would follow the rule that more latitude be given to picketing at such separate primary premises occupied in part by secondary employees, 116 NLRB at p. 860, n. 10. But in the instant case, the secondary employers were not performing separate tasks but were actually carrying on the business of the primary employer.

Deena Artware, *supra*, also presented a situation whereby the union extended its picketing beyond the area of the primary dispute to include locations and entrances used by a general construction contractor doing construction work rather than the normal business of Deena Artware and such picketing was only at times that this construction work was being done.

(b) As to S & R

In the S & R case only the picketing at the G & R tipple in Jellico was involved. Therefore, S & R presents another of the protean forms of activity that may arise under Sec. 303 and one not yet considered by this Court or any of the Courts of Appeals. Here Petitioner was engaged in a dispute with two employers simultaneously. Here, as in the G & R case, the neutral employer was the trucking contractor employed by S & R to deliver coal from S & R's mines to G & R's tipple. G & R had subleased some of its coal lands to S & R and the coal was processed over G & R's tipple under S & R's contract with Gilchrist & Sons. Recognizing their interrelated businesses, S & R would not sign a contract with Petitioner unless G & R did and stated that what G & R did S & R would go along with, and therefore, the collective bargaining negotiations were conducted jointly (R. 728-730, 834).

However, the picketing at G & R's tipple which induced truckers not to haul S & R's coal was still primary picketing because of Petitioner's dispute with G & R. Certainly Congress did not intend to permit an employer to subcontract or sublease part of its business to another employer who in turn engaged a third employer to haul the product between them thereby preventing the employees from exercising other protected rights under the Act, on the theory that such activity at each of their business locations would become activity away from the primary premises of both of them. Under such a construction, if Petitioner had picketed the S & R mine, which it did not, G & R could claim that, although such picketing was primary to S & R, it was secondary to G & R, as the neutral truckers were hauling coal to its tipple and the purpose was

to get S & R to cease doing business with G & R—thus emasculating the rights guaranteed by the Act to employees of both employers. No such chameleonic attributes should be placed upon such picketing. Nor is such construction warranted to accommodate the dual Congressional objectives. It would be impossible to free the truckers from the dispute and still preserve the employees' right to engage in an ordinary strike. As long as the action remained at the premises of a struck employer and did not extend to the premises of the secondary employer, the Congressional intent is fulfilled. Under the reasoning of the Sixth Circuit, the only way the activity of the union in S & R dispute could remain lawful would be to engage in concerted activities at a time there was no dispute with G & R and vice versa. Petitioners submit no such Congressional limitation can be found in the terms of the act or its legislative history.

In addition, it can be persuasively argued that because S & R was delivering coal subleased from G & R to G & R's tipple to be processed by G & R for S & R the tipple was a common situs of both G & R and S & R. Therefore, the picketing was not away from the premises of S & R. Stated another way, the picketing was not extended away from the primary employer's premises to the premises of a secondary employer. Also, the Court allowed G & R damages for this picketing.

For the reasons heretofore set forth, although involving additional facts than in G & R, the Sixth Circuit's judgment in the S & R case is in conflict with the principles of construction enunciated in *International Rice Milling* and *International Brotherhood of Electrical Workers, supra*, and the arguments presented as to G & R are applicable to S & R.

(c) As to Gilchrist & Sons

Although the District Court found the picketing constituted a secondary boycott against Gilchrist & Sons, the Sixth Circuit did not rely upon such finding but found that Congress permitted anyone under Sec. 303 (b) to sue, even though not a primary or secondary employer, if such person were directly injured by the secondary boycott. The latter question is the basis of Question #2. However, the District Court concluded the picketing of G & R's tipple was for the purpose of causing S & R to cease doing business with Gilchrist & Sons. Nothing in the circumstances indicates any such intent or object. It could not have had this purpose because Gilchrist & Sons, not having employees engaged in coal mining, was not engaged in a dispute with the union. Such a finding is not based upon any reality of the factual situation and is further illustrative of the misconstruction placed upon the Act. To find a violation in the S & R case it found S & R a primary employer. To find a violation in Gilchrist & Sons it made S & R a neutral employer.

In addition, the District Court found the picketing was for the purpose of inducing the employees of the deep mine operators (also sublessees of G & R) to engage in concerted activity to force the deep mine employers to cease doing business with G & R. Nothing is contained in the record on which to base such finding, nor did the District Court make any such Findings of Fact. The only evidence involving these employers was supplied by an employee of a trucking contractor hired to haul coal from such deep mine employers. He testified that after learning of the dispute and learning of the picketing he quit hauling coal. Not a single witness testified regarding any employee of any such

deep mine operator. This further illustrates the District Court and Sixth Circuit's confusion and misconstruction of Sec. 303.

B. The Sixth Circuit's Decision is in Conflict With Decisions of Other Circuits

The Sixth Circuit's ruling making primary activities actionable which has the effect of inducing employees of secondary employers to cease transporting goods belonging to another employer across a picket line is in conflict with the decisions of other Circuits in *NLRB* v. *Service Trades Chauffeurs, etc.*, 2 Cir. (1951), 191 F. 2d 65; *NLRB* v. *Local 294, Int'l Bro. of Teamsters*, 2 Cir., (1960) 284 F. 2d 887, 889; *DiGiorgio Fruit Corp.* v. *NLRB*, D.C. Cir. (1951), 191 F. 2d 642; *Local 618, Automotive Petroleum and Allied Industries Employees Union* v. *NLRB*, 8 Cir. (1957), 249 F. 2d 332; cited in *Piezonki* v. *NLRB*, 4 Cir. (1955), 219 F. 2d 879, wherein the Fourth Circuit expressed similar views, although the facts involved were not similar.

The Second Circuit completely rejects the Sixth Circuit's construction of Sec. 303 in *Osborne*, and as repeated in the instant case, that the union must exercise its rights, even in primary picketing, consistent with the right of the neutral employer to remain uninvolved in the dispute when it pointed out in *Service Trades Chauffeurs, etc.*, 191 F. 2d at p. 67: "The Taft-Hartley Act does not completely shelter neutrals—in this case, the so-called secondary employer. If it did, strikes would often be hopelessly crippled. Instead the Act recognizes and undertakes to reconcile the competing claims of unions to strike and bystanders to be free of harm from so-called 'secondary boycott' ".

C. A Question of Importance

The question presented is one of importance because of the conflict of opinions of the lower courts in their interpretation of this important federal statute. Problems involved are of wide import dealing with basic rights of labor unions under the Constitution and laws of the United States. This question has not been but should be resolved by this Court in order to insure a uniformity of construction of the Act.

To permit a union to be held liable for damages caused by primary picketing which has the effect of inducing employees of independent contractors to cease performing services for the primary employer would emasculate labor's rights under the Act to an even greater degree than to make it an unfair labor practice under Sec. 8(b)(4). The construction of Sec. 303 in the instant cases is at variance with this Court's and several Circuit Courts' construction of the same conduct under Sec. 8(b)(4). Logic and reason lead to the conclusion that Congress intended what is permissible under Sec. 8(b)(4) also is permissible under Sec. 303, but it was held otherwise in *Southern Coal Co., etc.* v. *UMWA*, Civil Action No. 284, wherein the U. S. District Court, Eastern District of Kentucky, entered judgments against UMWA on June 27, 1961 for the grand total of $264,000 and the same District Court entered judgment on Jan. 18, 1961, in the case of *Elkay Coal Company, et al.* v. *UMWA*, Civil Action No. 555, U.S.D.C., E.D. Ky., against UMWA for a grand total of $104,845. UMW is now perfecting an appeal of these judgments in the Sixth Circuit. Each is based upon the same construction of Sec. 303 as in the instant cases. Numerous other cases are pending in this same district with the District Court indicating on June 26,

1961 that there would be no further adjudication until further clarification by this Court in the instant cases.

In addition, some twenty-two suits have been filed and are presently pending against UMWA in the federal courts of Kentucky, Tennessee and Alabama which involve claims totaling over $18,000,000.

Noteworthy is the fact that the mode of operation of the plaintiffs in the instant cases is common in the coal industry. The prime operator sets up a series of business organizations to perform the separate tasks of producing coal—one to lease or own the coal lands, one to operate the mines, one to operate the tipple and still another to sell and market the coal. This arrangement provides a favorable tax setup and protects those with assets from liability that arises in such undertakings, as Gilchrist, Jr. testified was the purpose of incorporating G & R (R. 157, 233). This arrangement leaves them free from liability for unpaid wages, unpaid royalty to welfare funds set up for their employees,[13] as well as any other liability that might be incurred, such as minimum wage standards, etc. But should a narrow, artificial and unrealistic construction of Sec. 303 be placed upon such an arrangement to also permit the operator to wipe out the rights of his employees and the union rights provided by other sections of the Act?

This mode of operation is not unique to the coal industry but is commonplace in almost all industries so

[13] UMW Welfare Fund obtained a judgment against Gilchrist & Sons for failure to pay into the Welfare Fund 40 cents per ton as required by UMW Contract, in the amount of $87,315.16. *John L. Lewis et al. v. William Gilchrist et al.*, Civil Action No. 3398, April 6, 1961 in the Dist. Court, Northern Dist. of Ala. Northeastern Division.

that the crushing impact of these decisions will not be solely upon coal miners.

Furthermore, the situation in S & R presents the secondary boycott problem in another form not heretofore decided but which should be decided by this Court and is bound to arise again, not just in the pending cases, but in the economic struggles in the coal industry in the future and in other industries as well.

Question #2

The Sixth Circuit held that Gilchrist and Sons, though not the employer of employees primarily or secondarily involved in a dispute, had the right to recover under Section 303 on the theory that its business was integrated with that of a controlled corporation which was primarily involved. (A. p. 5a-6a) The decision thus presents an important Federal question under Section 303. The Sixth Circuit's decision is in conflict with Congressional intent in the enactment of Section 303 and is in conflict with its own decision in *United Mine Workers of America* v. *Love and Amos Coal Company*, 6 Cir., (1960), 279 F. 2d 716.

That a labor dispute has an effect on employers or business concerns other than the one immediately involved, is an elementary fact of economic life. Every person having a relationship with a strike-bound employer suffers from the dispute and the severity thereof depends on the degree of the relationship.

The instant case presents the important question of whether Congress intended to protect a person who is not primarily or secondarily involved in a given dispute but who has a close relationship with one who is so involved.

Gilchrist and Sons was not a party to the dispute. It had no employees at either the mine or tipple for it elected that those operations should be carried on, without risk of personal liability incidental to the employer-employee relationship, through a corporation, G & R. Gilchrist and Sons' connection with the dispute thus was confined to these factors: It owned the equipment by which G & R mined and processed coal; it held title to the coal mined by G & R; and it purchased or sold coal delivered by others, including S & R, to the tipple operated by G & R. The Sixth Circuit found from these factors that Gilchrist and Sons' operations were integrated with those of G & R and that such integration sufficed to entitle Gilchrist and Sons to sue under Section 303.

The Sixth Circuit did not consider that Petitioner's inducements of G & R and S & R employees and of truck drivers (the so-called "secondary" employees) focused not upon equipment or coal owned or purchased or sold by Gilchrist and Sons but upon G & R and S & R, from whom Petitioner sought collective bargaining agreements. It is entirely possible that Gilchrist and Sons' business was harmed but the Sixth Circuit failed to recognize that such harm did not result from a secondary boycott; it resulted from the inability of G & R, to mine coal or operate the tipple and the refusal or inability of others to bring coal to the tipple operated by G & R. If Gilchrists & Sons' business was harmed and if its property was damaged by Petitioner Gilchrists & Sons may have an action under state law. It does not have an action under Sec. 303.

The key to the question necessarily is found in Section 303(b), which provides "*whoever* shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore" (emphasis supplied) and the question posed requires determination of the intended meaning of this provision.

Strong indication of its meaning is found in the Congressional history of the Act, for as Senator Taft noted the provision's language paralleled the Sherman Act and accordingly "the way would not be opened to sue for secondary damages." *The New Labor Law*, (BNA, 1947) p. 78; see also 93 Cong. Rec. 5074-5. The Sherman Act provides that "*any person* who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . ." 15 U.S.C. Section 15 (Emphasis supplied).

Heretofore the Sixth Circuit, in the only reported cases of which we are aware on the scope of Section 303(b), gave express recognition to the analogy in the Sherman and Taft-Hartley Acts. See *Deena Products Co.* v. *United Brick & Clay Workers of America*, 6 Cir., (1952), 195 F. 2d 612; *United Brick & Clay Workers* v. *Deena Artware, Inc.*, 6 Cir. (1952), 198 F. 2d 637; *United Mine Workers of America* v. *Love and Amos Coal Company*, 6 Cir., (1960), 279 F. 2d 716. Of these decisions *Love and Amos* is particularly in point. In that case a coal sales agency, under contract with a mining company of which its principals owned half, sold the mining company's coal upon commission and contended that it had been damaged by a federally proscribed boycott of the mining company. Though the District Court had found that interference with the Love and Amos business had been a purpose of UMW in its alleged boycott of the mining company, it held the term "whoever," as found in Section 303, did

not permit suit by one consequentially injured.[14] In so doing it relied on antitrust decisions in which persons in positions comparable to Love and Amos were found without federal remedy. In particular it found persuasive *Melrose Realty Co., Inc.* v. *Loew's, Inc.*, 3 Cir., (1956), 234 F. 2d 518, in which the claim of a non-operating owner-lessor of a motion picture theatre with a percentage lease was denied; *Martens* v. *Barrett*, 5 Cir., (1957), 245 F. 2d 844, in which the claim of sole stockholders of a corporation was denied; *Productive Inventions, Inc.* v. *Trico Products Corp.*, 2 Cir., (1955), 224 F. 2d 678, cert. denied 350 U.S. 936, in which the claim of a patentee who had granted an exclusive license for the term of the patent on a royalty basis was denied; and *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, D.C. Mass., (1956), 147 F. Supp. 907, wherein the claim of a person having a profitable relationship with another was denied.

Petitioner submits the relationship of Gilchrist and Sons to G & R in the instant case is not materially distinguishable from those in the Sherman Act cases found persuasive by the Sixth Circuit in *Love and Amos* and that the distinction made by the Sixth Circuit herein of its *Love and Amos* decision is completely without justification. The fact that the business of Gilchrist and Sons and G & R were "integrated" is not an adequate basis for such distinction. Judge Wyzanski dealt with this precise question in *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc., supra*, a

[14] As in the instant case, Love and Amos had also been granted judgment under state law. But there, upon holding that Love and Amos "never had and could not assert any federally recognized cause of action or ground for recovery" the Sixth Circuit went on to hold that the District Court had no jurisdiction to determine the state claim.

Sherman Act case. Recovery was there denied to a corporation whose business was integrated with that of another corporation owned by substantially the same interests and whose business "as a matter of logic" has been foreseeably damaged in the controversy. The Court said (147 F. Supp. 907, 909):

> "Those who organized the corporations chose to take the advantages and disadvantages which flow from separate legal personalities. Cf. Timken Roller Bearing Co. v. United States, 341 US 593, 71 S. Ct. 971, 95 L. Ed. 1199. They placed only one of the two corporations in direct competition with defendant. And their choice limits their potential recovery."

This language is peculiarly in point for, as in *Snow Crest,* Gilchrist and Sons made its choice of mode of operation. And it did so in such a way as to avoid the potential liabilities of a UMW contract which its affiliate, G & R, materially failed to carry out. It did so, quite obviously, to legally isolate itself from the labor scene of which it now says it was the central part.

It is evident from the foregoing that the Sixth Circuit has given effect to an important Federal statute, the scope of which was "narrowly conceived," *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 357 U.S. 93, 100, in a manner inconsistent with Congressional intent, that its action is in conflict with analogous decisions of other Courts of Appeal, and that its decision presents an important Federal question in the administration of the Act which has not been, but should be, settled by this Court.

Question #3

The Sixth Circuit's approval of the District Court's assertion of jurisdiction of a state claim joined with a claim under Section 303 on the theory that the state and federal claims were but different grounds of a single cause of action supported largely by the same facts, presents an important federal question concerning application of the doctrine of ancillary or pendant jurisdiction in the field of labor law. The determination is in conflict with Congressional intent in the enactment of Section 303 and with the decision of the Fourth Circuit in *United Mine Workers of America* v. *Patton*, 4 Cir., (1954), 211 F. 2d 742.

In two prior cases the Sixth Circuit concluded that power to determine a state claim arising out of a labor dispute resides in a District Court under the doctrine of ancillary or pendant jurisdiction where the state claim is factually related to a claim under Section 303. In each case the Sixth Circuit found applicable the rule of *Hurn* v. *Oursler*, 289 U.S. 238. *United Mine Workers of America* v. *Meadow Creek Coal Company*, 6 Cir., (1959), 263 F. 2d 52, cert. denied 359 U.S. 1013; *United Mine Workers of America* v. *Osborne Mining Company, Inc.*, 6 Cir., (1960), 279 F. 2d 716, cert. denied 364 U.S. 881. In the instant case this power was confirmed though the facts were, as we think, entirely primary, or, if we are mistaken in this contention, predominately primary. And the power was confirmed upon complaints which were expressed entirely in terms of Section 303 without mention of state law.[15]

---

[15] Five days before trial a pre-trial order was entered which makes reference to the state claim. UMW excepted to this claim because of the absence of reliance on state law in the complaint (R. 46).

The principle announced in these three decisions, and the present decision in particular, is of utmost importance in labor law for it manifests the accomplishment by indirection through decisional law of what Congress refused to do by way of statute. It makes federal courts the forum for the determination of broad state claims of union interference arising from labor disputes in the absence of independent grounds of federal jurisdiction.[16]

Petitioner insists that adjudication of such a state claim in federal court under the *Hurn* theory is an assertion of jurisdiction contrary to positive Congressional intent. In 1947 Congress considered but rejected a statutory plan which would have directly accomplished the result herein achieved, for bills passed in the House would have made actionable the same conduct here found illegal under state law.[17] But instead of enacting such a broad prohibition, Congress singled out and proscribed only the more narrow area of union conduct known as secondary boycotts.

The course of labor litigation under federal law and in federal forums prior to 1947 further points to the conflict in Congressional intent and the Sixth Circuit's decision. Prior to 1947, the only federal statute of general consequence affording a cause of action against labor organizations was the Sherman Act, 15 USC Section 1, et seq., and history teaches that the variant

---

[16] Petitioners do not argue that a union may not be sued in state courts under state law for damages which flow from interference to a business by breach of peace. *San Diego Building Trades Council* v. *Garmon*, (1959) 359 U.S. 236; *United Construction Workers* v. *Laburnum Construction Corp.*, (1954) 347 U.S. 656.

[17] Legislative History of the Labor Management Relations Act, 1947, Vol. I, pp. 158, 204, Sec. 12 of HR 3020.

forms of its use against labor organizations was initially as severe, *Loewe* v. *Lawlor*, 208 U.S. 274 and 235 U.S. 522, as it was unpredictable, *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443. This is not to say that the common law did not play its part in federal forums in labor litigation. Such notable cases as *Hitchman Coal & Coke Company* v. *Mitchell*, 245 U.S. 229, and *United Mine Workers of America* v. *Red Jacket Consol. Coal & Coke Co.*, 4 Cir. (1927), 18 F. 2d 839, show traditional instances, in the jurisdictional sense, of common law adjudication in federal courts, for in those cases a diversity of citizenship was found to exist. It has been said that during the period from 1891 to 1927, probably two-thirds of the labor cases found their way into federal courts on claims of diversity, *The Labor Injunction*, Frankfurter and Greene, p. 210.

But the substantive principles followed in these cases, which were quite adverse to labor, in the end proved self-defeating. An aroused public opinion, reflected in the Norris-LaGuardia Act, 29 U.S.C. Section 201, et seq., condemned federal intervention in such cases. That Act narrowed drastically the availability of federal courts in labor controversies, and a thoughtful judiciary made it clear that Norris-LaGuardia had legal as well as equitable and procedural consequences, *United States* v. *Hutcheson*, 312 U.S. 219.

An important landmark in the changing scene gave expression to a rule specifically germane to the question here presented. Consistent with the attitudes which prevailed after Norris-LaGuardia, this Court, in *Apex Hosiery Company* v. *Leader*, 310 U.S. 469, a sit-down strike involvement, stated that in a "suit, in which no diversity of citizenship of the parties is

alleged or shown, the federal courts are without authority to enforce state laws," and that federal jurisdiction "is to vindicate such federal right as Congress has conferred . . . and violence . . . however reprehensible, does not give the federal courts jurisdiction." So, too, in *Hunt* v. *Crumboch*, 325 U.S. 821, 826, wherein plaintiff relied upon acts alleged to be violative of the Sherman Act identical to those which would have been considered under Pennsylvania's common law, this Court stated that "Whether the respondent's conduct amounts to an actionable wrong subjecting them to liability for damages under Pennsylvania law *is not our concern.*" (Emphasis supplied.)

Congress had these then recent cases in mind in 1947 while considering passage of the Taft-Hartly Act. When it is considered that Congress, in light of these cases and in the course of enacting the bitterly contested legislation, not only failed to proscribe "common law" interference but expressly rejected such a provision after House approval and, in its stead, adopted a provision dealing narrowly with a particular form of union conduct and gave federal courts jurisdiction to award damages therefor, the contention that Congress nevertheless intended state law claims grounded on general interference to be adjudicated as part and parcel of the federal cause on a theory of ancillary jurisdiction having its legal genesis in the relatively prosaic field of copyright law, is completely negated and destroyed. At the least such a contention and its affirmation in a case of the magnitude of the instant case is worthy of the consideration of this Court.

The only other case in which a United States Court of Appeals has considered the precise question here raised

is *United Mine Workers of America* v. *Patton*, 4 Cir. (1954), 211 F. 2d 742. In that case the Fourth Circuit, unlike the Sixth Circuit herein, rejected a contention that in a Section 303 cause of action a federal court was nevertheless warranted in awarding punitive damages for the common law tort of interference even though such damages were not recoverable under the federal statute. Holding that Section 303 "makes no provision for the recovery of punitive damages," the Fourth Circuit said:

> "This is not a case brought under the diversity jurisdiction of the federal courts to enforce a common law liability . . . and the plaintiffs are entitled to invoke the jurisdiction of the federal courts only because they sue on a cause of action created by a federal statute, i.e., on the cause of action created by Section 303(b) of the Labor-Management Relations Act . . ."

This language accords in principle with that of *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 4 Cir. (1948), 167 F. 2d 183, 186 (which was quoted with approval by this Court in *General Committee, etc.* v. *Missouri-K.-T. R.R. Co.*, 320 U.S. 323, 332, 333), in which the Fourth Circuit said:

> "Congress has been highly selective in its use of legal machinery. . . . The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provision of the Act indicate."

Finally, Petitioner says the doctrine of ancillary or pendant jurisdiction should not have been applied in this case for the federal and non-federal claims do

not, as stated in the *Hurn* case, "so precisely rest upon identical facts as to be little more than the equivalent of different epithets to characterize the same group of circumstances." Even acceptance of the lower courts' views on what constitutes secondary activity leaves much of the union conduct in this case unquestionably primary. Certainly, for example, the union's inducements of G & R employees at the mine was singularly primary, as well as all the activity after May 1 which was unrelated to inducement of employees of the trucking contractors in March.

Moreover, the legal significance of conduct varies in claims under Section 303 and state law. Conduct in breach of the peace has no significance under Section 303, *NLRB* v. *International Rice Milling Co.*, 341 U.S. 665. On the other hand, under *San Diego Building Trade Council* v. *Garmon*, 359 U.S. 236, violence or a breach of the peace is the essential element in a claim against a union for interference based on state law. Similarly, as the award in the instant case of $119,000 in punitive damages makes clear, union conduct in state cases is considered from the standpoint of punitive damages, whereas punitive damages may not be awarded under Section 303, *United Mine Workers of America* v. *Patton*, supra.

If the will of Congress expressed in Section 303 is to be given any meaning at all, primary conduct would have no material bearing on the question of whether the union at some other time and in some other manner engaged in a secondary boycott. The lower courts, however, lumped these facts and all other facts incident to the dispute together and rendered a judgment which,

as we think, has nothing or little to do with activity proscribed by Section 303.

The absence in the instant case of a common or substantially identical set of facts[18] in the federal and non-federal claims, affords additional reason why the rule of ancillary or pendant jurisdiction as applied herein should be considered by this Court.

Question #4

The Sixth Circuit approved the District Court's conclusion that UMW was responsible for acts of destruction to respondents' property and other alleged acts of violence, though no UMW agent or member or, indeed, no identified individual was shown to have been implicated therein. Such a conclusion is in conflict with the decision of this Court in *U.S.* v. *White*, 322 U.S. 694; with that of the Court of Appeals for the District of Columbia in *International Ladies Garment Workers Union* v. *NLRB*, D.C. Cir. (1956), 237 F. 2d 545; and with the principle expressed by the Fifth Circuit in *NLRB* v. *Tex-O-Kan Flour Mills, Inc.*, 5 Cir.-(1941), 122 F. 2d 433. It is also in conflict with Congressional intent with regard to an action under Section 303 or the common law. The conclusion manifests error of the most prejudicial nature and gives rise to a question of great importance in the administration of the Act.

---

[18] Where there has been an absence of common facts, joinder of a non-federal claim has been denied. *Stray* v. *Devine's Inc.*, 7 Cir. (1954), 217 F. 2d 187; *Landstrom* v. *Thorpe*, 8 Cir. (1951), 189 F. 2d 46; *Kaplan* v. *Helenhart Novelty Corp.*, 2 Cir. (1950), 182 F. 2d 311; *Kleinman* v. *Betty Dain Creations, Inc.*, 2 Cir. (1951), 189 F. 2d 546; but see *Maternally Yours* v. *Your Maternity Shop*, 2 Cir. (1956), 234 F. 2d 538; *Crabb* v. *Welden Brothers*, 8 Cir. (1947), 164 F. 2d 797; *French Renovating Co.* v. *Ray Renovating Co.*, 6 Cir. (1948), 170 F. 2d 945.

The District Court predicated its conclusion on the finding that a "climate of lawlessness" had been created by the "unlawful acts and coercive attitude of Prater and Daniel and of persons with whom they were associating." (R. 116) At the same time, however, the District Court also concluded that "the acts of others not authorized by the defendant may have contributed to the result" (R. 132).

We submit that this question cannot and should not be determined on the basis of such inflammatory and conclusory expressions as "climate of lawlessness." We acknowledge the District Court concluded that union activities, in which union agents were involved, particularly during initial phases of the dispute, exceeded permissible forms of union persuasion. But it is another matter to translate those picket line activities, which took place in the context of a dispute involving many employers and some thirty-seven hundred employees, into a form of blanket authorization to persons unknown to commit acts in utter disregard of law.

We ask this Court to recognize that the District Court's approach left petitioner virtually defenseless before the bar of justice. UMW's categorical denials and its uncontradicted explanations of the steps it took to urge its members to abide by the law (R. 863, 865, 914, 933-934), which is precisely all that organization or any organization in its place could do, were, evidently, without the slightest effect on the Court. The District Court's thesis admits of no evidence which would preclude union liability short of actual and positive demonstration that some person unconnected with the UMW and, apparently, without sympathy for its cause, was the actor in the events in question. This is an extraordinary burden on a litigant upon whom no burden of proof rests.

The rule approved by the Sixth Circuit is reminiscent of the long rejected law of conspiracy as developed in early labor cases. Under this law Mr. Justice Frankfurter, dissenting in *United Brotherhood of Carpenters and Joiners* v. *U.S.*, 330 U.S. 395, 419, observed that unions

> "were held responsible not for acts of agents who had authority to act, but for every act committed by any member of a union merely because he was a member, or because he had some relation to the union although not authorized by virtue of his position to act for the union in what he did."

Or it might be compared to the rule enunciated in the *Debs* case (In re *Debs*, 158 U.S. 564) where it was held that a union which called a strike might be held responsible for violations of criminal law though violations were not shown to have been permitted by union agents and the union did everything possible to prevent them.

In the instant case no evidence implicates union members, let alone agents, in the violent acts in question and it thus may well be concluded that the District Court's rule compares unfavorably, from petitioner's standpoint, with the rejected concept of conspiracy.

But the standard applied in the *Debs* case and the countless cases which followed did not survive the Norris-LaGuardia Act, 29 U.S.C. Section 106, nor was it revived by Taft-Hartley, 29 USC 185(e); and the rule here approved collides with the requirements of the latter Act, which makes agency and not theoretically envisioned culpability, the basis upon which liability may be predicated. *Perry Norvell Co.*, 80 NLRB 225, 243 (1948). Under Taft-Hartley, union

membership is not equivalent to agency;[19] nor is a member's prominence in a union's organizing campaign "sufficient to establish such agency," *Electric Wheel Co.*, 120 NLRB 1644, 1647 (1958).

"Suspicion is not proof" the Pennsylvania Supreme Court has said in a similar context, *Fife* v. *Great Atlantic & Pacific Tea Co.*, 356 Pa. 265, 52 A. 2d 24, 37 (1957). The Labor Board said the same thing in *National Union of Marine Cooks and Stewards*, 87 NLRB 54, 75 (1949) where two men were beaten in the course of a labor dispute, by unidentified assailants: "The testimony suggests that some members of the Respondent union may have committed the assault . . ., but that is mere speculation. . . . Under these circumstances I do not feel warranted in finding the Respondents responsible for the assault on [the two men]". And similarly in *Lumber and Sawmill Workers Union*, 87 NLRB 937, 940-941 (1949), the Board said, "There is absolutely no evidence to connect the Respondent with Knights' [the alleged agent] action. *A suspicion is not evidence, nor is it a substitute for proof.*" In *Blue Ridge Coal Corp.*, 129 NLRB No.

[19] Senator Taft, during Taft-Hartley debate, stated that ". . . I do not think there is anything in the fact that a union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization" Legislative History of the Labor Management Relations Act, 1947, p. 1026). Again, Senator Taft declared that "the fact that a man was a member of a labor union in my opinion would be no evidence whatever to show that he was an agent" (Ibid. pp. 1204-5). See also *U.S.* v. *White*, 322 U.S. 694, 702, where it was declared that "actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question."

19 (1960), the Board refused to find UMW liable for an assault, saying:

> "This incident occurred more than a mile distant from the entrance to the Marra Brothers mine, and Williams was unable to identify any of the men present. Under these circumstances, and particularly in view of the facts that there was no union agent present who might have repudiated the threat and no evidence that the men who made the threat were pickets, we do not attribute responsibility for this incident to the Respondents."

Agency cannot be imputed, as the District Court's opinion implies, on a union's failure to "repudiate" violence occurring in the course of a dispute. *International Ladies Garment Workers Union* v. *NLRB*, D.C. Cir., (1956) 237 F. 2d 545, makes clear that "silence provides no rational basis for inferring that they acquiesced in the wrongs of others with whom no agency relationship is shown."

The essence of the District Court's rule is to raise suspicion to the status of fact in a manner heretofore condemned, *NLRB* v. *Columbia Enameling & Stamping Co.*, 306 U.S. 292, 300; and the anomaly in the instant case is pointed up by the fact that whereas, in most of the cases cited, the rule has been rejected where cease and desist orders or injunctions have been at issue it was applied in the present case as the basis for the award of an enormous money judgment. As such it surely conflicts with *NLRB* v. *Tex-O-Kan Flour Mills, Inc.*, 5 Cir., (1941), 122 F. 2d 433, where it was said:

> ". . .; a cease and desist order on this point costs no money and only warns to observe a right which

already existed; evidence short of demonstration may easily justify such an order.

"Orders for reinstatement of employees with back pay are somewhat different. They may impoverish or break an employer, and while they are not in law penal orders, they are in the nature of penalties for the infraction of law. The evidence to justify them ought therefore to be substantial, and surmise or suspicion, even though reasonable, is not enough."[20]

Petitioner asserts that the problem here discussed is predominately one of law and that the standard of liability to be applied in such cases raises an important federal question under the Act which this Court has not, but should, determine. It raises also, if the application of the doctrine of ancillary jurisdiction is approved herein, the important federal question of the standard to be applied in federal courts on state claims arising from labor disputes, for it will be noted that the exacting demand of "clear proof" specified by Norris-LaGuardia's Section 6, 29 U.S.C. Section 106, and spelled out in *United Brotherhood of Carpenters and Joiners* v. *U.S.*, 330 U.S. 395, is required in all suits arising from labor disputes "in any courts of the United States," save those specifically brought under the Taft-Hartley Act.

It is therefore submitted that review by this Court is requisite to correct manifest error and gross injustice and to resolve the important question posed.

---

[20] See *Union Responsibility for Acts of Officers and Members*, 63 Harvard L.R. 1035, at page 1046.

CONCLUSION

For the reasons herein discussed, Petitioner prays that this petition for writ of certiorari should be granted and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Sixth Circuit, entered in Case Nos. 14,379 and 14,380 on May 1, 1961, as aforesaid.

Respectfully submitted,

WILLARD P. OWENS
900 Fifteenth St., N. W.
Washington 5, D. C.

WILLIAM J. TURNBLAZER
Middlesboro, Kentucky

E. H. RAYSON
R. R. KRAMER
Burwell Building
Knoxville, Tennessee

Attorneys for Petitioner

KRAMER, DYE, MCNABB & GREENWOOD
Knoxville, Tennessee
Of Counsel

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 14379-80

WILLIAM G. GILCHRIST, JR., WILLIAM G. GILCHRIST, III, and JAMES BLYTHE, Trustee for ROBERT A. GILCHRIST, a Minor, PARTNERS, d.b.a. GILCHRIST & SONS; and G & R COAL CO., INC., *Plaintiffs-Appellees*,

v.

UNITED MINE WORKERS OF AMERICA, *Defendant-Appellant*.

SNYDER AND RANDOLPH, INC., *Plaintiff-Appellee*,

v.

UNITED MINE WORKERS OF AMERICA, *Defendant-Appellant*.

On Appeals from the United States District Court for the Eastern District of Tennessee, Northern Division.

Decided May 1, 1961.

Before: McALLISTER, WELCK and O'SULLIVAN, Circuit Judges.

WELCK, Circuit Judge. Gilchrist & Sons, a partnership, and G & R Coal Company, Inc., a corporation, instituted action in the District Court against United Mine Workers of America, a labor organization,[1] to recover compensatory

[1] Gilchrist & Sons will be referred to herein as "partnership"; G & R Coal Co., Inc. as "G & R"; United Mine Workers of America as "UMW"; Snyder & Randolph, Inc. as Snyder and Randolph.

and punitive damages for the alleged violation of the secondary boycott provisions of the Labor-Management Relations Act of 1947 as amended. 29 U. S. C. Sec. 187. It was averred in the complaint that the plaintiffs were engaged in the mining of bituminous coal in the Jellico, Tennessee-Kentucky area; that in March 1959 and subsequent thereto UMW induced their employees to concertedly refuse to work on coal produced by other employers and induced the employees of other employers to concertedly refuse to work on coal which was to be brought to plaintiffs premises; that the purpose of such conduct was to compel plaintiffs to bargain with UMW as the representative of their employees although the Union had not been certified as a representative of said employees by the National Labor Relations Board as required by the Act. Plaintiffs' causes of action were based on the provisions of the Act and also the common law of Kentucky and Tennessee.

Snyder & Randolph, Inc., a corporation, filed a similar action on the same day in the District Court.

The two cases were tried together by the District Judge without a jury from June 20, 1960 through June 30, 1960. The District Judge handed down a comprehensive opinion which contained a summary of the evidence and adopted forty-two findings of fact and twenty conclusions of law. It appears on seventy-nine pages of the printed record. The District Judge found in favor of all the plaintiffs; that Gilchrist & Sons, the partnership, is entitled to recover $239,000 compensatory damages and $79,000 punitive damages making a total of $318,000; that G & R is entitled to recover compensatory damages in the amount of $20,000 and $7,000 punitive damages making a total of $27,000; that Snyder and Randolph is entitled to recover compensatory damages in the amount of $101,000 and $33,000 punitive damages making a total of $134,000. Judgments were entered in favor of the plaintiffs in accordance with these findings.

The partnership owned valuable leases on coal mining lands comprising about 37,750 acres in the Jellico area. It also owned mining machinery, equipment and facilities. It had been engaged in the mining and sale of coal for several years. G & R was organized as a corporation in 1957. It was a closed corporation. The members of the partnership were its principal officers, directors and shareholders. Shortly after its organization G & R entered in a contract with the partnership whereby the partnership agreed to furnish G & R with sites in the Jellico area for the strip mining of coal and also to furnish and maintain the necessary machinery, equipment and facilities therefor, G & R, for a stipulated price, agreed to strip mine and prepare the coal furnishing all labor and supervision therefor and to load the coal after preparation on the partnership's chosen method of conveyance. The partnership also subleased lands to G & R which in turn subleased to others for auger mining and deep coal mining. G & R subleased lands to Snyder & Randolph for auger mining. Snyder & Randolph entered into an agreement with the partnership to sell it all coal produced under the sublease and the partnership agreed to account for all sales less a commission of 5% for selling and 7½% for crushing and handling the coal. The coal mined by G & R and Snyder and Randolph was carried from the mines to tipples by independent truckers who were not employees of the plaintiffs.

Prior to the present controversy, G & R and its predecessor had signed the National Bituminous Coal Wage Agreement and various amendments with UMW. Some of its employees belonged to the Union, but a majority did not. The Union and the employees had little, if any, dealings and G & R paid the employees the same wages it paid its other employees engaged in road work without regard to Union pay scales and other conditions of employment. Snyder & Randolph had no contractual relationship with the Union although some of its employees were members.

In December 1958 UMW negotiated an amended wage agreement with certain coal operators and sent notice that any signers of the old agreement would be expected to sign the new amended agreement and the old agreement would be cancelled at the end of 60 days. G & R believed that it could not operate under the new amended agreement and refused to sign it. G & R notified UMW of its cancellation of the old agreement as of March 2, 1959. Snyder & Randolph likewise refused to sign the new agreement.

In February 1959, the agents and representatives of UMW began an intensive campaign in southeastern Kentucky and northeastern Tennessee to organize the field. They instructed G & R employees not to work after the old contract expired. They told Snyder & Randolph that if they did not sign the amended agreement "we will shut you down." They stated that they took orders from Washington and intended to use whatever means were needed to carry them out. They contacted truck owners and drivers and warned them not to deliver coal for G & R and Snyder & Randolph.

When peaceful persuasion failed other means were adopted. Truck drivers were stopped and ordered to dump coal in the street blocking the entrance to the tipple. Truckers were stopped in the streets and ordered to turn around and return to Jellico. A temporary restraining order was issued on April 30th by the United States District Court at London, Kentucky at the instance of the National Labor Relations Board restraining UMW from coercing or interfering with employees of the coal industry.

The federal court injunction did not stop the acts of violence which continued with unabated fury. On May 1, George Lindsey, a crusher operator of G & R was ambushed and shot at while on his way home after finding a barricade of trees and timbers on the public street which barred the path of his truck. Another employee was assaulted, beaten and rendered unconscious by the use of brass knuckles.

On May 2, an independent trucker hauling coal for Snyder & Randolph was ambushed. Two tires were shot and one bullet entered the cab of his truck. On May 3, the truck of George Bray was dynamited at his home at midnight. A dynamite explosion took place at the home of Arnold Spradlin a few days after he had begun hauling coal for Snyder & Randolph. At midnight on May 6, 1959 two tipples or crushers belonging to the partnership were wrecked by dynamite explosions occurring from one to five minutes apart and were of sufficient force to break windows on the main street in Jellico about a block away. On June 4 a railroad trestle serving the tipple of Snyder & Randolph at Verne, Kentucky was destroyed by dynamite. On June 16 a large Compton auger owned by Snyder & Randolph which cost about $90,000 was almost totally destroyed by dynamite.

The principal argument advanced by UMW, in its appeal, was that Gilchrist & Sons was not a party to the alleged secondary boycott and was not entitled to maintain an action under Section 303 of the Labor-Management Relations Act of 1947, 28 U. S. C. Sec. 187. It urges that it had no labor dispute with the employees of the partnership and were not attempting to organize them. UMW asserted other grounds of error, namely, that truck drivers engaged on a contract basis to haul coal mined by G & R were not "neutral" employees within the meaning of the Act; that the District Court had no jurisdiction to determine whether the evidence established a violation by UMW of the common law of Kentucky and Tennessee; that UMW could not be sued as an entity; that the District Court erred in holding UMW liable for damage to Gilchrist & Sons' tipple and Snyder & Randolph's auger; that the evidence does not support findings that UMW unlawfully interfered with and destroyed the business of Gilchrist & Sons, G & R and Snyder & Randolph; that the evidence does not justify the awards of damages to the several plaintiffs.

UMW relies on our decision in *Love and Amos* v. *United Mine Workers*, 279 F. 2d 716, certiorari denied 364 U. S. 881 in support of its contention that the partnership was not entitled to maintain an action in the District Court under the Labor-Management Relations Act of 1947. In that case Love and Amos had a verbal contract to sell coal for Osborne Mining Company for a commission. Love and Amos claimed damage not because of any activities of UMW directed against it, but on account of the destruction of the business of Osborne. Its theory was that it would have sold Osborne's coal and earned commissions if Osborne's business had not been destroyed by UMW. Love and Amos had sustained no direct damage by reason of any of the unlawful acts of UMW. Its damage was indirect and remote and not of the type contemplated to be remedied by the Labor-Management Act of 1947.

In the present case, the relationship between the partnership and G & R was much different than that existing between Love and Amos and Osborne Mining Co. The partnership here was a principal and not an agent. It had an established coal business and sold its own coal. It owned the leases, coal, mining, machinery, equipment and facilities. In fact, the partnership had an integrated coal business in which only the actual mining was delegated to an instrumentality (G & R) controlled by its members. Activities of UMW were directed at the partnership.

The damage sustained by the partnership was direct and not remote, indirect or incidental. Its physical property was damaged by the dynamiting. Its coal business was disrupted and destroyed. It did not claim damage because of the destruction of the business of G & R as in Love and Amos. In our opinion, the plain language of the Act "whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue . . ." authorized the suit by the partnership which was directly injured in its business and property by reason of the violation of the Act by UMW.

With respect to the other claims of error assigned by UMW, we are of the opinion that the findings of fact adopted by District Judge Robert L. Taylor were supported by substantial evidence and were not clearly erroneous. We would have no right to disturb them. *Commissioner of Internal Revenue* v. *Duberstein*, 363 U. S. 278. Many of the legal questions raised by UMW were settled by our decisions in *Osborne Mining Co.* v. *United Mine Workers*, 279 F. 2d 716, certiorari denied 364 U. S. 881 and *United Mine Workers* v. *Meadow Creek Coal Co.*, 263 F. 2d 52, certiorari denied 359 U. S. 1013. The District Judge was familiar with these rules of law since he presided at the trial of the *Osborne Mining* and *Love and Amos* cases. These cases involved conduct somewhat similar to that in the cases at bar. We are satisfied that the District Judge correctly applied the rules of law with respect to the issues of liability and damage. In our judgment, the awards of damages to the plaintiffs were not beyond the permissible limits of his discretion and were not excessive.

The judgments in both cases are affirmed.

Labor Management Relations Act, 1947

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or

manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

29 U.S.C. 185. *Suits by and against labor organizations—Venue, amount, and citizenship*

* * *

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Norris LaGuardia Act

29 U.S.C. 106, 47 Stat. 71: *Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents*

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.